

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CASE NO. 5:16-CV-146

Motion DENIED

This the 13th day of May, 2016.

/s/ Louise W. Flanagan

JANE Q. SMITH,

Plaintiff,

v.

PHOENIX INSURANCE COMPANY,

Defendant.

PLAINTIFF'S MOTION FOR REMAND

COME NOW the plaintiff in the above-entitled action, pursuant to 28 U.S.C. § 1447(c), and hereby move the Court for an Order remanding the above-entitled action back to the North Carolina Superior Court, Wake County. This Motion for Remand is based upon the following grounds:

1. The Phoenix Insurance Company (hereinafter "Defendant") pursuant to 28 U.S.C. § 1446, filed a notice of removal of the above-entitled action to the United States District Court for the Eastern District of North Carolina on April 1, 2016.
2. Defendant alleges in their Notice of Removal that this court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332.
3. The defendant is not entitled to removal pursuant to 28 U.S.C. § 1446.
4. Under 28 U.S.C. § 1332 (c)(1), "a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, *except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such*

insurer shall be deemed a citizen of – (A) every State and foreign state of which the insured is a citizen” (emphasis added).

5. This is a direct action against the insurer of a policy or contract of liability insurance, to which action the insured is not joined as a party-defendant. (Ex. A to Complaint: Homeowners Policy.)
6. The insured is a citizen of North Carolina.
7. The complete diversity requirement of 28 U.S.C. § 1332 is not satisfied, because Plaintiff is a resident of North Carolina and Defendant is also a resident of North Carolina pursuant to 28 U.S.C. § 1332 (c)(1)(A).

WHEREFORE, plaintiff, by and through the undersigned counsel, move this court for an Order remanding the instant action back to the North Carolina Superior Court, Wake County, for the reasons stated in this Motion.

Respectfully submitted, this the 19th day of April, 2016.

/s/ Michael K. Perry

MICHAEL K. PERRY

N.C. Bar No. 11050

P.O. Box 2108

Wake Forest, North Carolina 27588

Phone: (919) 556-3008

Fax: (919) 249-5130

Email: mperry@mikeperrylaw.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that on April 19, 2016, a copy of the foregoing MOTION TO REMAND was served upon the following by U.S. Mail, postage prepaid and addressed as follows:

James A. Dean
Womble Carlyle Sandridge & Rice, LLP
One West Fourth Street
Winston-Salem, NC 27101
Email: jdean@wcsr.com

Attorney for Defendant

MICHAEL K. PERRY, ATTORNEY, PA

/s/ Michael K. Perry

MICHAEL K. PERRY
N.C. Bar No. 11050
P.O. Box 2108
Wake Forest, North Carolina 27588
Phone: (919) 556-3008
Fax: (919) 249-5130
Email: mperry@mikeperrylaw.com

Attorney for Plaintiff